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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )  
Streamlining the Commission's )  
Antenna Structure Clearance )  
Procedure )

WT Docket No. 95-5

and )

Revision of Part 17 of the )  
Commission's Rules Concerning )  
Construction, Marking, and )  
Lighting of Antenna Structures )

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COMMENTS OF GTE SERVICE CORPORATION

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behalf of its telephone,  
equipment, and service  
companies

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## TABLE OF CONTENTS

Summary . . . . .	iii
I. Introduction . . . . .	1
II. Overlapping Functions of the FCC and FAA Will Cause Significant Delay . . . . .	2
III. Assignment of Secondary Responsibility for Tower Maintenance to FCC Licensees and Permittees . . . . .	6
A. Preserving Licensee Responsibility for Tower Maintenance Contradicts the Purpose of the NPRM . . . . .	7
B. Permittees Should Bear No Obligation for Tower Maintenance . . . . .	10
IV. Request for Clarification of Current Rule 17.7 . . .	11
V. Definitional Issues . . . . .	12
A. Definition of "Owner" . . . . .	12
1. Ownership of an Antenna Structure as a Fixture Pursuant to a Lease . . . . .	12
2. Owners versus Appointed Entities . . . . .	13
B. Definition of "Antenna Structure" . . . . .	14
VI. Ensuring Owner Compliance . . . . .	15
VII. Specific Issues Regarding Implementation of the Proposed Registration Process . . . . .	16
A. Geographical Implementation . . . . .	16
B. Electronic Registration, Access to Database Information, and Registration Fees. . . . .	17
1. Electronic Registration. . . . .	17
2. Access to Database Information . . . . .	18
3. Registration Fee . . . . .	18

C.	Notification of Construction or Dismantlement under Proposed Section 17.45. . . . .	18
VIII.	Suggested Changes in Form 854 . . . . .	20
A.	Actual Structure Owners versus Appointed Owners . . . . .	20
B.	Drug Certification Addendum . . . . .	20
IX.	Proposed Registration Procedure and the Commission's Environmental Rules . . . . .	22
X.	Voluntary Lighting. . . . .	24
XI.	Conclusion. . . . .	25

## **SUMMARY**

GTE Service Corporation ("GTE"), in these comments, addresses the Commission's Notice of Proposed Rule Making ("NPRM") which proposes the creation of a uniform antenna structure registration process, the creation of a database for antenna structure information, and revisions to Part 17. GTE believes that the NPRM's goals, which include the prevention of air hazards, the reduction in filings with the Commission, and greater accessibility to antenna structure information, are laudable.

However, as currently proposed, the registration process could cause significant delays in the construction of transmitter sites. Structure owners and licensees would have to make separate, sequential filings with the FAA and FCC. Approval from the FAA would be a prerequisite for registering the structure with the FCC, and approval from the FCC would be a prerequisite for construction. GTE suggests that if the Commission is to share more of a role in ensuring that antenna structures meet FAA guidelines, registration could be greatly simplified by combining the separate procedures.

GTE also supports a shift in the burden for lighting and marking antenna structures from non-owner licensees to the owners of such structures. GTE urges the Commission to eliminate or minimize any remaining responsibility mere tenant licensees may share with owners for marking and lighting. Similarly, permittees should be relieved of all responsibility

for compliance with FAA guidelines, as such entities, by definition, do not have operating transmission facilities on the structures in question.

GTE also seeks clarification of various current and proposed portions of Part 17 of the Commission's rules. Specifically, GTE asks that current Section 17.7(c) be clarified; that the definition of an antenna structure owner in proposed Section 17.2(d) be more clearly defined; that the definition of an antenna structure in proposed Section 17.2(a) be more precisely explained; and that the time frame for notification of construction, set forth in proposed Section 17.45, be made plain.

GTE suggests a few changes regarding proposed Form 854. In addition to requesting clarification on certain points, GTE questions whether a drug certification addendum is appropriate for a registration process in which the structure owner is deriving no benefit from the Commission. The burden and complexity of making such certifications is such that antenna structure owners may delay or refuse compliance with any registration procedures.

With regard to implementation of the NPRM's proposals, GTE supports registration of structures on the basis of geography as the most simple and efficient method for all concerned. GTE believes that structure owners should have the option to register structures electronically, and that the public should have electronic as well as hard-copy access to

antenna database information. GTE supports a small fee for accessing a database.

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WT Docket No. 95-5

**COMMENTS OF GTE SERVICE CORPORATION**

**I. Introduction**

GTE Service Corporation ("GTE"), on behalf of its domestic telephone, equipment, and service companies, hereby submits its comments in response to the Commission's Notice of Proposed Rulemaking in the above-captioned docket.<sup>1/</sup> GTE is a leader in telecommunications and the provider of cellular and other mobile radio services.

Pursuant to congressional amendment of the Communications Act of 1934,<sup>2/</sup> the Commission, in the NPRM, proposes an antenna structure registration process designed to

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<sup>1/</sup> Streamlining the Commission's Antenna Structure Clearance Procedure and Revision of Part 17 of the Commission's Rule Concerning Construction, Marking, and Lighting of Antenna Structures (Notice of Proposed Rule Making), WT Docket No. 95-5 (January 20, 1995) [hereinafter NPRM].

<sup>2/</sup> See 47 U.S.C. §§ 303(q) and 503(b)(5).

make the owners of antenna structures primarily responsible for the lighting and marking of such structures. The NPRM also proposes revisions to Part 17 of the Commission's Rules, and the creation of a single database for antenna structure information.

GTE supports the creation of a single, uniform database for antenna structures. Such a database would greatly assist licensees in complying with the Commission's rules. However, GTE questions whether the FCC should create a duplicative registration process that overlaps considerably with that of the FAA. The process, as currently proposed, may cause significant delays in the construction and modification of antenna structures. GTE also seeks clarification of several points in the NPRM, and suggests certain modifications to the proposed procedures to enhance compliance with the FAA's and FCC's standards and rules.

## **II. Overlapping Functions of the FCC and FAA Will Cause Significant Delay**

GTE recognizes that the statutory scheme adopted by Congress vests the authority to impose lighting and marking requirements in the FCC. GTE submits, however, that the FAA, as the agency with expertise in this area and with the primary mission of ensuring air safety, should make air hazard determinations and exercise structure registration functions. The FCC's involvement, by comparison, is peripheral to its main field of regulatory concern. Notwithstanding this more



peripheral role, the Commission proposes in the NPRM that the FCC would have the responsibility of amassing and administering a database over which the FAA makes all the substantive decisions. GTE submits that any plan adopted by the Commission should minimize regulatory burdens and take steps towards vesting structure marking responsibilities in a single agency, after seeking appropriate congressional action, if necessary.

As proposed, the antenna site registration process would require applicants to file different forms with the FAA and the FCC and to receive approval from both agencies before construction could proceed. Structure owners would file a Form 7460 with the FAA. The FAA would then undertake a substantive analysis of the air hazard aspects of proposed structures and issue lighting and marking instructions. The structure owner would also submit a registration application to the FCC containing much of the same information previously submitted to the FAA. The FCC would then issue an 854R with a registration number, but without substantive analysis of the air hazard potential of the proposal.<sup>3/</sup> When construction commences, both the FAA and the FCC would have to be notified; when construction is completed, both the FAA and the FCC would again have to be notified. In all cases, separate forms would be used for the FAA and FCC filings. Such overlapping

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<sup>3/</sup> In GTE's experience, the FCC has not deviated from the tower and lighting specifications recommended by the FAA.

authority of the FAA and FCC is confusing, duplicative and unnecessarily burdensome.

One stated goal of the Commission's initiative in this Docket is to reduce paperwork burdens on both the Commission's staff and affected licensees and structure owners.<sup>4/</sup> This laudable objective comports with both the Paperwork Reduction Act<sup>5/</sup> and the current Commission's efforts to "re-invent" government through streamlined, more responsive and more efficient administration of regulatory responsibilities. The registration process proposed here, however, may have the unintended effect of increasing paperwork and injecting months of delay into the initiation or improvement of communication service. As proposed, the duplicative filings with the FAA and FCC would generate additional paperwork, even beyond that which is presently required. More importantly, the serial filing process (i.e., notification to the FAA followed by registration with the FCC) would add weeks or months of lag time to the transmitter site construction timetable. Rather than streamlining the process, the proposal could significantly delay the process.

Under the current rules, in services like cellular radio, many sites can now be constructed or modified without specific prior approval, significantly reducing lag time in

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<sup>4/</sup> NPRM at ¶¶ 1, 16.

<sup>5/</sup> 44 U.S.C. § 3501, et seq.

implementing "internal" cells to improve service. Before constructing such a cell, the cellular carrier must file an FAA notification if the structure exceeds the criteria in Section 17.7 of the Commission's rules. It currently takes from two to four months to receive an FAA response to the Form 7460 notifications,<sup>6/</sup> but GTE can then proceed to construct its facilities and file the appropriate Form 489 or Form 854 (if no Form 489 is required) without awaiting action by the Commission. Under the proposed registration process, cellular carriers planning construction of such a permissive facility could not construct until they file Form 854 and receive back an 854R registration from the Commission. GTE has found that it has been taking the Commission approximately eight weeks to act on Forms 854. If this pattern continues--and it is likely to worsen if the volume of 854 filings expands dramatically pursuant to the NPRM--the new procedure would add at least eight weeks of delay in service to the public, even though the registration process associated with the Form 854 would be largely ministerial.

There are several steps which could be taken to reduce the administrative burden caused by these overlapping responsibilities. For example, paperwork could be simplified by using a single form for both the FAA notification and the FCC registration. A unified form should be used for the

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<sup>6/</sup> The time can be even longer if the proposal must be "circularized" by the FAA prior to issuance of a determination.

initial filings as well as subsequent post-registration filings when both the FAA and the FCC must be notified of the start and completion of construction. Also, the FAA's initial air hazard response could be amended to include the structure owner's registration number. This action would enable the applicant or structure owner to proceed with construction using the specifications in the FAA air hazard response and to simply notify the FCC later, perhaps by sending the FCC a copy of the FAA's approval form. These measures, if adopted, would minimize the duplication of effort associated with having two agencies regulate the same general area. GTE urges the Commission to adopt policies which would unify and streamline filing procedures.

### **III. Assignment of Secondary Responsibility for Tower Maintenance to FCC Licensees and Permittees**

The Commission's NPRM contemplates a regulatory process consisting of primary and secondary compliance obligations. Primary responsibility for compliance with registration and marking requirements is placed on antenna structure owners, while FCC licensees retain "secondary" or "default" responsibility for compliance with the rules.<sup>7/</sup>

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<sup>7/</sup> This rule is suggested generally in proposed Section 17.6 and is then reiterated in each applicable rule part. Reducing the volume of rules and ensuring consistency among all the various services could be accomplished by simply retaining this particular requirement in proposed Section 17.6 and deleting it elsewhere.

GTE believes that there are a number of fundamental problems with this approach, as set forth below.

**A. Preserving Licensee Responsibility for Tower Maintenance Contradicts the Purpose of the NPRM**

In 1992, Congress passed the following amendment to Section 303 of the Communications Act:

Except as otherwise provided in this chapter, the Commission from time to time, as public convenience, interest, or necessity requires, shall--

(q) Have authority to require the painting and/or illumination of radio towers if . . . such towers constitute . . . a menace to air navigation. The permittee or licensee, and the tower owner in any case in which the owner is not the permittee or licensee, shall maintain the painting and/or illumination of the tower as prescribed by the Commission . . . . In the event the tower ceases to be licensed . . . for the transmission of radio energy, the owner of the tower shall maintain the prescribed painting and/or illumination of such tower until it is dismantled, and the Commission may require the owner to . . . remove the tower when the [FAA] determines that . . . it may constitute a menace to air navigation.

47 U.S.C. § 303(q).

GTE acknowledges that the Commission's authority to relieve non-owner licensees of all responsibility in this area is not entirely clear from the language of Section 303(q) of the Act. However, the language at the end of the second sentence of the provision, i.e., "as prescribed by the Commission" would appear to give the Commission considerable flexibility to assign responsibility within the overall congressional mandate. Thus, the thrust of the new regulatory

scheme reflected in the NPRM should be to shift away from licensee responsibility for air hazard compliance and toward structure owner responsibility for such compliance.

Structure owners are in the best position to have access to geographic information and architectural plans, to know when structure construction starts and stops, to monitor structural changes, to maintain the structure, and to serve as a focal point for all users of the structure. In virtually every other area regulated by the FCC, it is the owner of the regulated asset who is recognized and identified as the entity legally responsible for controlling the regulated activity.

In the NPRM, however, the Commission stops short of relieving FCC licensees and permittees of the responsibility for maintaining antenna structures. Now that Congress' action has, quite sensibly, imposed the burden of air hazard regulation compliance on structure owners in the first instance, there is little reason to retain "secondary" responsibility for FCC licensees.

Under the proposed registration procedures,<sup>8/</sup> if a land owner decides to construct a 210 foot building, the land owner must file a Form 7460 with the FAA. In the absence of a communications facility, the owner has no legal obligation for lighting, marking and maintaining the structure in accordance with FAA regulations. Nor do any of the scores of tenants who may occupy space in the building have any

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<sup>8/</sup> See NPRM at ¶¶ 5-13.

responsibility whatsoever with respect to this matter. On the other hand, if an FCC licensee leases space on the structure for a transmitter site, not only would the building owner be required to register the site and comply with any marking and lighting requirements, but the FCC licensee would automatically assume responsibility for ensuring that the building owner complies with these strictures. The FCC licensee assumes the responsibility even though the FCC licensee may only be on the site for a short time and its transmitter facility may not have increased the height of the building. During the FCC licensee's tenancy it is obligated--unlike any other tenant of the building--to be sure the structure is properly marked. Placing this requirement on licensees is grossly inequitable.

A tenant has no legal right or authority to alter the structure on which it is a tenant. Nonetheless, under the NPRM's proposal, a licensee whose building owner fails to comply with FAA requirements must itself ensure compliance. Bringing a structure into compliance may involve painting a structure, affixing lights, or making other alterations to a structure which the licensee does not own. The law should not--and normally does not--impose an obligation in circumstances where the obligor does not have the power or authority to meet that obligation.

The proposed regulatory framework set forth by Congress in Section 303(q) of the Act takes a major step

toward placing air hazard responsibility where it properly belongs. In circumstances where the licensee is itself the structure owner, full responsibility for compliance with air hazard regulations should lie with the licensee. However, where the licensee is merely a tenant on another's structure, no burden should fall on the licensee. Indeed, by providing for "secondary" or "default" responsibility, the Commission may actually encourage structure owners to take their obligations less seriously because there would be a guarantor of their obligation if they failed. Structure owners should be solely responsible for complying with air hazard requirements.

**B. Permittees Should Bear No Obligation for Tower Maintenance**

To the extent that the Commission retains its proposal to impose secondary obligations on licensees, there is no reason why the burden should be imposed on permittees as well. A permittee, by definition, has not constructed a facility on the subject structure. Indeed, it is possible that the permittee may not construct the facility at all, and allow the permit to lapse. Moreover, in most services, an applicant is not required to have an actual lease or ownership interest in the proposed site when it files its application and is granted a permit. Yet under the proposed rule, the permittee becomes immediately secondarily liable for the lighting and marking of the structure as soon as its



construction permit is granted and, presumably, as long as the permit is outstanding.

While there may be some argument for imposing obligations on an entity that has facilities at the site, no obligation should fall on a mere permittee who may have no legal relationship with the site beyond oral or written reasonable assurance of the site's availability. The same holds true of "conditional licensees," a category which has become more common at the Commission of late, but for which there is no provision in the rules. Neither permittees nor conditional licensees should bear responsibility for air hazard compliance. To the extent that such entities are also actually the structure owners, GTE believes that the full responsibility for compliance would fall upon them at all times.

#### **IV. Request for Clarification of Current Rule 17.7(c)**

GTE seeks clarification of Section 17.7(c) of the Commission's current rules. While Section 17.7(a), (b), and (d) set forth specific guidelines for FAA notification, Section 17.7(c) states that notification to the FAA is required "when requested by the FAA." 47 C.F.R. § 17.7(c). This situation appears to arise when an instrument landing approach is involved. However, a company planning a structure would not normally be "requested" by the FAA to submit a notification unless the FAA had independent knowledge of this

construction. Under the current rule, applicants have little advance notice of when notification to the FAA is necessary.

Every structure owner and every licensee should be able to determine with certainty the circumstances under which FAA notification and concomitant FCC registration are required. GTE therefore proposes that the Commission either delete current Section 17.7(c), or establish practical standards that will enable the general public to determine with certainty when the FAA, and hence the FCC, would expect to be advised of the construction or modification of antenna structures that do not fall within the concrete parameters of Section 17.7(a), (b), and (d). For example, the FCC could reference particular FAA hazard criteria, such as proximity to an actual or proposed aircraft instrument approach path (which prospective owners would be required to ascertain from the FAA).

## **V. Definitional Issues**

### **A. Definition of "Owner"**

#### **1. Ownership of an Antenna Structure as a Fixture Pursuant to a Lease**

Proposed Section 17.2(d), which defines who the owner of an antenna structure is for purposes of registration, states:

For the purposes of this part, an antenna structure owner is either the entity that owns the structure or the entity designated by the owner to maintain the antenna structure in accordance with this part. The antenna structure owner, however, is ultimately

responsible for compliance with the requirements of this part.

GTE requests clarification of the definition of "Owner" as it applies to circumstances in which a licensee constructs a tower on leased property. In this situation, the tower becomes a fixture to the land under the lease and will remain with the land after the lease expires. It is unclear under the proposed rules whether the land owner or the licensee/lessee would be the owner during the term of the leasehold for registration purposes.

GTE proposes that the Commission clarify that the definition of "Owner" in proposed Section 17.2(d) explicitly provide that a land owner who acquires possession of an antenna structure by virtue of the structure becoming a fixture to the land pursuant to a lease or contract would not be deemed to be the owner of the structure until expiration of the lease under which it was constructed. Rather, the licensee/lessee would be deemed the owner during that period. This clarification would ensure that the entity with the most direct immediate interest in the structure would be responsible for registration activities.

## 2. Owners versus Appointed Entities

The definition of "Owner" in proposed Section 17.2(d) covers both actual owners and appointed entities. It would be preferable to have a separate definition for appointed entities who are empowered to act on behalf of the owner. Such clarification would eliminate

confusion on the forms and elsewhere as to whether a given entity is truly an owner or is a non-owner who is nevertheless deemed to be an owner.

**B. Definition of "Antenna Structure"**

The definition of an antenna structure in proposed Section 17.2(a) is key to the applicability of all of the requirements of the NPRM's registration process. As proposed, the term "antenna structure" includes "the radiating and/or receive system, its supporting structures and any appurtenances mounted thereon." Id. GTE seeks clarification of the intended scope of this definition.

First, one interpretation would conclude that the Commission intends to define a single structure or tower, with all appurtenances, as a single "antenna structure." However, another interpretation could conclude that each individual radiating system and appurtenance is itself an "antenna structure" which would have to be separately registered and approved. GTE is also concerned that the definition would apply to structures on which only receive-only antennas are installed. This single provision greatly expands the reach of the current rule so as to capture thousands of residential dwellings with television antennas, schools with ITFS receive antennas, apartment buildings with wireless cable receive antennas, and thousands of other unlicensed "antenna structures." If the Commission did not intend this result,

the rule should be modified and limited to radiating systems and licensed receive-only systems.

A further problem with the definition of antenna structure goes to the breadth of the Commission's jurisdiction to regulate in this area. In Section 303(q) of the Communications Act, Congress granted the Commission authority to require painting and/or illumination of "radio towers." 47 U.S.C. § 303(q). In common usage, radio towers are a very limited subset of antenna structures; radio towers are tall metal structures erected for the purposes of radio transmission while an antenna structure is any kind of building with an antenna affixed to it. The FCC's attempt to exercise authority over all antenna structures (and structure owners) arguably exceeds the congressional mandate.

#### **VI. Ensuring Owner Compliance**

While GTE believes that responsibility for air hazard compliance should be with the structure owner, this approach is not without difficulties. There may be instances where structure owners who have no obligation under existing lease agreements will be reluctant to take the necessary steps to be registered.<sup>9/</sup> In this situation, a licensee could be

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<sup>9/</sup> This circumstance arises infrequently under the current system because the licensee who is proposing the addition can file the necessary Form 7460 in its own right without the involvement of the landlord. The Commission then can process the underlying application on the basis of the FAA's response.

precluded from adding an antenna to the top of an existing structure, because the application could not be granted without an appropriate corresponding modification registration submitted by the structure owner. Even if the proposed addition would not result in any change in required lighting or marking and would not affect air safety in any way, the application could not be granted without the owner's concurrence.

One limited but useful solution would be to permit non-owner licensees to automatically be treated as appointed entities for purposes of filing an 854 modification registration provided the registration does not result in new lighting or marking requirements. This would permit improvements in service by licensees to proceed where the structure owner would not incur any additional expenses.

## **VII. Specific Issues Regarding Implementation of the Proposed Registration Process**

### **A. Geographical Implementation**

Assuming the Commission adopts its proposed registration process, GTE supports a geographical implementation procedure for pre-existing structures. GTE believes that requiring the registration of all towers in a particular region would ensure methodical compliance with the Commission's standards. GTE, like many multi-market cellular carriers, is an owner or tenant of hundreds of tower sites across the country. It would be extremely difficult for

carriers to simultaneously generate and file all the necessary registration forms on any single specified date. A rolling geographic approach (perhaps moving across the country from east to west or on the basis of FAA regional offices) would permit all structure owners and licensees in each area to focus on the registration task at the same time. This system would be far preferable to a patchwork system in which various structures in the same region were subject to different registration requirements. GTE suggests that geographical filing dates be staggered by at least two months in order to permit adequate time for compliance in each region. Of course, early registration should always be an option.

GTE opposes registration on the basis of tower height. GTE believes it would be particularly difficult for entities that own many towers to sort their towers by height rather than by geographical location. Thus, of the three suggested implementation procedures, geographical implementation would best meet the Commission's goals under the NPRM.

**B. Electronic Registration, Access to Database Information, and Registration Fees**

**1. Electronic Registration**

GTE strongly supports electronic registration of antenna structures, because it would be relatively inexpensive, practical, and efficient. In light of the unique difficulties presented by a requirement for non-licensees to register with the FCC, the Commission should present structure

owners with as many filing options as possible to ease the burden of registration. However, paper filing should remain an available option because many structure owners will not have the hardware or knowledge to use the electronic mode.

## 2. Access to Database Information

GTE supports on-line access to the proposed antenna database, as well as the provision of quarterly hard-copy updates. The combination of these two methods will permit the public to enjoy the full benefits of the database.

## 3. Registration Fee

Should the Commission decide to implement its procedures and create a database, GTE would support a small fee for accessing the database. GTE believes the benefits accrued to users from a uniform database would outweigh the cost of a small fee.

## **C. Notification of Construction or Dismantlement under Proposed Section 17.45**

Proposed Section 17.45 states:

The owner of an antenna structure for which painting or lighting is required for which an antenna structure registration number has been obtained must, prior to start of antenna structure construction and upon completion of such construction or changes, notify the Commission within 24 hours of completion of construction and/or dismantlement.

GTE requests clarification of the notification period set forth in proposed Section 17.45. As written, the rule does not appear to state a specific time frame for notification prior to commencing construction, as long as notification is



made before construction starts. However, notification of construction completion must be made within 24 hours. Perhaps the intent was to create a 24 hour notification period before and after construction; if so, this intent should be specified.

GTE also notes that the notification period in proposed Section 17.45 is quite different from the time period stated on FAA Form 7460. The FAA only requires 48 hour notice before construction commences, and allows applicants to advise the agency of completion within five days after the structure reaches it greatest height.

GTE opposes an FCC notification period that would be different from, and shorter than, that allowed by the FAA. First, differences in notification times would be confusing. Second, a shorter notification time frame could impose significant burdens on structure owners. Because many registrants may not be FCC licensees, a 24-hour notification period could serve as a further deterrent to compliance. For these reasons, GTE suggests that the period for notification prior to construction be 48 hours, and the notification of completion of changes be five days, just as it is for FAA notification.